the Court has refused to enforce the trust, and the case of *Milroy v. Lord*[1] appears to me to contain the clearest implication that where the settlor declares that he holds the property in trust for certain purposes the trust will be held good.

In the result I hold that Yeap Chor Ee deceased by this Deed of Settlement constituted himself and himself only a trustee of these 2,000 shares of $100 each for the persons described in clause 2 of the Deed who are the persons mentioned in the earlier part of this judgment. I will hear further argument as to the form of the order to be made as a result of this decision.

Order accordingly.

Solicitors: *Presgrave & Matthews; Hogan, Adams & Allan.*

HARNAM SINGH v. K. V. SAMBASIVAM

[A. C. J. (Spenser Wilkinson J.) November 15, 1954]

[Penang — Civil Appeal No. 8 of 1954]

Courts Ordinance, 1948 — Claim for possession of plank and attap house — Jurisdiction of Magistrate's Court — Meaning of "immovable property" — Interpretation and General Clauses Ordinance, 1948.

The question raised in this appeal was whether the Magistrate's Court had jurisdiction to deal with a claim for possession of a plank house with attap roof.

Held: the Magistrate's Court had no jurisdiction because if the house was immovable property the Magistrate had no jurisdiction because of the dispute as to title, and if the house was movable property the Magistrate had no jurisdiction because the subject matter of the action was over $1,000.

Cases referred to:—

(1) *Kartar Singh v. Pappa* (1954) M.L.J. 193.

(2) *Kiah binti Hanapiah v. Som binti Hanapiah* (1953) M.L.J. 82.

CIVIL APPEAL.

Eusoffe Abdoolcader for the appellant.

The respondent in person.

Cur. Adv. Vult.

Spenser Wilkinson J. : — The appellant, who was the plaintiff in the Court below, claimed possession of a house No. 365 Main Road, Prai, which is described as a plank house with an attap roof.

The respondent's defence was that the house in fact belonged to him and that a bill of sale of the house which on the face of it purported to be an out-and-out sale of the house to the appellant, was in fact a bill of sale by way of security.

In addition to the bill of sale there was also a tenancy agreement signed by the respondent in favour of the appellant which the defendant claimed had been signed by him under duress.

The learned Magistrate who tried the case decided that the bill of sale was a bill of sale by way of security and that the tenancy agreement had been signed under duress and dismissed the suit with costs on these grounds.

The appellant raised 17 grounds of appeal but as, in view of my decision, the case may come before the Courts again I express no opinion at all on the merits and will deal only with the points raised regarding jurisdiction.

The seventh ground of appeal was to the effect that the Magistrate had exceeded his jurisdiction because his decision in favour of the respondent was in effect a declaration that the alleged bill of sale was not a sale but a document of security and that the tenancy agreement was void and ought to be set aside. Whilst it is not necessary for me to decide this ground of appeal I do not think there is much substance in it. Fraud and duress were pleaded as defences and not as counterclaims, and I do not feel inclined to accept the proposition that the dismissal of a claim on a contract because it was induced by fraud or duress amounts to a declaratory judgment. Although it appears to me that the kind of questions which arose in the Magistrate's Court in this case were more suitable to be dealt with by the High Court because of the difficulty of the points of law involved and also because of the importance of fraud being specifically and fully pleaded I think the appellant's remedy in this respect would have been to apply under sub-section (2) of Section 66 of the Courts Ordinance (which by reason of Section 93 applies to a Magistrate's Court) for the transfer of the case to the High Court.

My decision in this appeal rests on the first ground of appeal, which was that the learned Magistrate had no jurisdiction to hear the case as there was a *bona fide* question of title involved and that the proceedings were, therefore, a nullity.

In considering this ground of appeal a preliminary question arises as to whether the house in question is movable or immovable property within the meaning of the provisions of the Courts Ordinance. Mr. Abdoolcader for the appellant pointed out that there was no definition in the Courts Ordinance of the expression "immovable property." There is, however, a definition of "immovable property" in the Interpretation and

General Clauses Ordinance, 1948. The relevant provisions of Section 2 of that Ordinance are as follows:—

"2. (1) In this Ordinance and in any written law as hereinafter defined . . . . . enacted, made or issued before or after the commencement of this Ordinance the following words and expressions shall, as from the commencement of this Ordinance . . . . . have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided —

(39) 'immovable property' includes land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth."

I would observe that the definition does not say "permanently attached to the earth" and uses the word "permanently" only in respect of things fastened to anything attached to the earth. Even temporary attachment to the land would appear, therefore, to be sufficient.

In *Kartar Singh v. Pappa*[1] it was held by Thomson J. that a dwelling house with plank walls and cement floor being a house attached to and so forming part of the land on which it stood was something which could not by itself be seized and sold.

In the case of *Kiah binti Hanapiah v. Som binti Hanapiah*[2] it was laid down by the Court of Appeal that houses of the Malay type resting on stilts and not buried into the earth are movable property. It is to be noted, however, that this decision is confined to houses of the Malay type resting on stilts.

Mr. Abdoolcader suggested in argument that the words "immovable property" as used in Sections 69 to 171 of the Courts Ordinance are wide enough to cover even the type of houses referred to in the Court of Appeal decision above cited. That decision was one relating to the question of whether or not a house of the Malay type had been the subject of a complete gift, so that the decision in no way depended upon the meaning to be given to the expression "immovable property" in any Ordinance or Enactment. The decision of Thomson J. would appear to suggest that a cement floor is sufficient to cause a house to form part of the land on which it stands, but again this was not a decision on the meaning of the words "immovable property" in the Courts Ordinance.

The law generally on the subject of these so-called movable houses is in a very unsatisfactory state. In practice many of such houses are treated as movable and it is usual to transfer them by means of documents which are called bills of sale. There is also a system of registration of ownership in the local district office presumably for the purpose of assessment. Sales of such houses by means of bills of sale are valid enough if the houses are in fact personal chattels within the meaning of the Bills of Sale Ordinance and if possession is given to the purchaser. But when possession is retained by the vendor then unless the bill of sale is made strictly in accordance with all the relevant provisions of the Bills of Sale Ordinance, which they seldom are, the so-called bill of sale is liable to be avoided. The situation is further complicated by the dearth of authority as to what is and what is not a movable house — or rather as to what houses, if any, are personal chattels within the meaning of the definition of the Bills of Sale Ordinance.

A house may well be movable for certain purposes and yet not a personal chattel within the Bills of Sale Ordinance. Even if it is a "personal chattel" it may still be "immovable property" within the meaning of the Courts Ordinance as interpreted by the Interpretation and General Clauses Ordinance. For the purpose of deciding the present question I think I am bound to consider the meaning of the phrase "immovable property" in its context in the Courts Ordinance and in no other. In this respect the decision of the Court of Appeal above referred to (by which I am bound and in which I took part) whilst it might assist in arriving at a conclusion, is not conclusive when considering the Courts Ordinance, because the question there arose in a different context. Whether a house, which can properly be described as of the Malay type resting on stilts not buried into the earth, is or is not "immovable property" within the meaning of the Courts Ordinance is a question which for reasons which appear later in this judgment I need not and do not decide.

Subject to this possible exception, and having regard to the general provisions of Sections 70 and 71 of the Courts Ordinance which appear to be designed to take diputes as to title out of the jurisdiction of the Sessions and Magistrates' Court (except by consent in the Sessions Court); and in view of the definition contained in the Interpretation and General Clauses Ordinance it appears to me that the legislature really had in mind all actions in the nature of ejectment and that therefore even the slightest attachment to the land would be sufficient to bring a house within the meaning of the expression "immovable property" in the Courts Ordinance, so that in effect almost any house (except perhaps a Malay house) is immovable in this context.

If there were no more to be decided than the mere question as to whether or not this particular house was or was not immovable I should feel bound either to take further evidence or to send the case back to the Magistrate's Court for further evidence to be taken as to whether or not this particular house is attached to the land, because I do not think there is really sufficient material on the record to enable a final conclusion to

be reached. But a further point arises as to jurisdiction, because if the house were found to be movable, then the question would arise as to the value of the subject matter of the action. Where immovable property is concerned sub-section (3) of Section 70 limits the jurisdiction by reference to the amount of the money claim or the amount of the rent, but in my opinion this sub-section has no bearing upon an action relating to movable property. In an action to recover possession of immovable property what is in issue is the right to possession, the value of which it is almost impossible to assess. But where the claim is in respect of a movable or chattel that claim is in effect to recover the chattel so that the chattel is the subject matter of the action. A movable house can be sold and taken away by the purchaser; but an immovable house cannot be sold apart from the land — only the lease or right to possession can be bought or sold. So that if the house in question is a movable then the claim in the action is for the recovery of a movable and the subject matter of the action is in my opinion the value of that movable. It is clear from the evidence in this case that whether the appellant's or the respondent's view of the value of the house is accepted that value is considerably more than $1,000. Under Section 90 of the Courts Ordinance therefore the Magistrate's Court would have no jurisdiction to try the case.

The result in my opinion, therefore, is that if the house is immovable property the Magistrate had no jurisdiction because of the dispute as to title; and if the house is movable property the Magistrate had no jurisdiction because the subject matter of the action was over $1,000, so that jurisdiction was lacking upon either view.

I must hold, therefore, that as the learned Magistrate had no jurisdiction the proceedings were a nullity and his judgment is of no effect upon the rights of the parties except perhaps as to costs.

One final point must be disposed of. At the conclusion of the hearing the learned Magistrate ordered that the documents be impounded and kept in the archives of the Court. The tenth ground of appeal was to the effect that he had no jurisdiction to do this. Mr. Abdoolcader submitted that whatever might be my decision upon the main grounds of appeal the order of the Court below impounding the documents must be rescinded. With this submission I agree. I can find no provision of the Subordinate Courts Rules which gives power to impound documents. Order 19 rule 8 provides that the Court may for sufficient reason order that any document produced in any proceedings be sent to the Public Prosecutor or the Collector of Stamp Duties or their deputies but says nothing about impounding. That part of the learned Magistrate's order which dealt with impounding the documents must, therefore, be set aside.

I will hear further argument as to the costs of the appeal and the costs in the Court below.

Order accordingly.

Solicitors for the appellant: *Ong Huck Lim & Co.*

KWEK KIM HOCK v. ONG BOON SIONG

[A. C. J. (Taylor J.) November 30, 1954]

[Singapore — District Court Appeal No. 32 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1953, s. 15(1)(g), (i) & (k) — Meaning of "premises" — Separate ownership of land and building — Whether a semi-permanent building can be "of temporary character".

This was an appeal from a decision of the District Court, dismissing an action for possession. The defendant had let a vacant shop lot from the landlord and with his consent had erected a wooden building on a concrete platform. Subsequently the plaintiff bought the land with full knowledge of the circumstances from the landlord. At the trial possession was claimed under four different provisions of the Control of Rent Ordinance: (1) that the rent was in arrears; (2) that the defendant had sublet portions for an aggregate return, greatly exceeding the rent paid by him to the plaintiff; (3) that demolition is necessary in the interest of town improvement: (4) that the premises consist of a temporary building and that the plaintiff required the site to erect a permanent building for which plans had been approved. The first ground was dropped at the appeal.

Held: (1) as in this case the defendant was the owner of the building and entitled to let portions of it, it would be impossible to apply para. (g) of s. 15(1) of the Control of Rent Ordinance to the circumstances of the case unless the rent actually paid by the occupants can be apportioned by the Court, so much for the site and so much for the building and as the plaintiff could not attempt such an apportionment in this case, a case under para. (g) could not be established; (2) where it is sought to rely on s. 15(1)(k) of the Control of Rent Ordinance which enables a landlord to recover possession where demolition is necessary in the interest of town planning there must be evidence of a scheme made or approved by a local authority, affecting the site in relation to other sites; (3) the provisions of s. 15(1)(i) of the Control of Rent Ordinance can apply where the land and the building are separately owned, as a house can for this purpose be regarded as part of the premises; (4) the building in this case was a semi-permanent building but was nevertheless of a temporary character for the purpose of the Ordinance and therefore the plaintiff could recover possession of the site under s. 15(1)(i) of the Control of Rent Ordinance.

Case referred to:—

(1) *Indo-Australian Trading Co. v. Png Lam Chua* (1954) M.L.J. 155.

APPEAL against dismissal of Action for possession.

K. E. Hilborne for the appellant.

A. N. Mitra for the respondent.